

David A. Jacobs, OSB No. 942202

djacobs@luvaascobb.com

LUVAAS COBB

777 High Street, Suite 300

Eugene, Oregon 97401

Telephone: (541) 484-9292

Telefax: (541) 343-1206

Attorneys for Defendant Daniel N. Gordon P.C.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
Eugene Division**

LAWRENCE JAMES SACCATO,

Plaintiff,

vs.

DANIEL N. GORDON P.C.,

Defendant,

FIA CARD SERVICES,
a.k.a. Bank of America

Co-Defendant.

Case No. 10-6111-HO

**DEFENDANT DANIEL N. GORDON
P.C.'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

1. Plaintiff has failed to contest defendant's concise statement of facts.

The defendant law firm set forth the material facts in support of its motion for summary judgment in its concise statement of facts. (Docket #8.) Plaintiff has failed to contest any of these facts by filing his own concise statement of facts, therefore, defendant's facts are deemed admitted. LR 56-1(f).

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DEFENDANT DANIEL N. GORDON P.C.'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT -1



777 High Street, Suite 300
Post Office Box 10747
Eugene, OR 97440-2747
Phone: 541-484-9292
Fax: 541-343-1206

2. Plaintiff did not plead any claims under the FDCPA.

In plaintiff's opposition, he makes no attempt to demonstrate how the defendant law firm might be liable under the Fair Credit Reporting Act as alleged in his complaint. Instead, plaintiff argues that the defendant law firm has violated the Fair Debt Collection Practices Act (15 USC §1692 *et seq.*, "FDCPA"). No where in the plaintiff's complaint, however, does plaintiff allege such a violation.

Moreover, the only FDCPA violation asserted in plaintiff's opposition is that the defendant law firm "failed to adequately and competently validate any alleged debt, and continued collection activities." (Plaintiff's opposition, p 2, ln 40-42; *see also* p 2, ln 98-99.) Even if this claim had been alleged in plaintiff's complaint, plaintiff's opposition papers show that it too would fail. Under section 1692g(b) of the FDCPA, a debt collector's duty to cease collection activities and validate only arises if a consumer disputes the debt within 30 days of receiving a validation notice required by section 1692g(a). Plaintiff's opposition includes copies of the defendant law firm's letter dated September 10, 2009 with the required validation notice. ("PE 102.") Plaintiff's opposition also includes his dispute letter dated February 23, 2010. ("PE 101.") Therefore, because plaintiff waited more than 30 days to dispute the debt, the defendant law firm was under no obligation to validate the debt.

3. Conclusion.

Plaintiff has failed to contest any of the material facts which support defendant's motion, and has made no effort to argue that the defendant law firm has violated the Fair Credit Reporting Act as alleged in his complaint. Instead, plaintiff argues that the defendant law firm has violated the FDCPA, even though no such violation is alleged, and even though plaintiff's own exhibits show that no such violation occurred. Therefore, the court should

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reject any attempt by plaintiff to amend his complaint, and should enter summary judgment in favor of the defendant law firm.

DATED this 3rd day of August, 2010.

LUVAAS COBB
Attorneys for Defendant Daniel N. Gordon, P.C.

By: /s/ David A. Jacobs
David A. Jacobs, OSB No. 942202
E-mail: djacobs@luvaascobb.com
Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT DANIEL N. GORDON P.C.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT on:

Lawrence James Saccato
6387 Old Highway 99S
Roseburg, Oregon 97471
Pro Se Plaintiff

by the following indicated method or methods:

- By **mailing** a full, true, and correct copy thereof in a sealed, first-class postage prepaid envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s), and deposited with the United States Postal Service at Eugene, Oregon, on the date set forth below.
- By depositing with **B & J/Barristers Aide** for hand-delivery a full, true, and correct copy thereof in a sealed envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s) on the date set forth below.
- By causing a full, true, and correct copy thereof to be **hand-delivered** to the attorney(s) at the attorney's last known office address listed above on the date set forth below.
- By sending a full, true, and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney(s) as shown above, at the last known office address of the attorney(s), on the date set forth below.
- By **faxing** a full, true, and correct copy thereof to the attorney(s) at the fax number(s) shown above, which is the last known fax number for the attorney's office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the attached transmission report(s).

DATED this 3rd day of August, 2010.

LUVAAS COBB
Of Attorneys for Defendant Daniel N. Gordon P.C.

/s/ David A. Jacobs
David A. Jacobs, OSB No. 942202